

Providing Disaster Relief Through Charitable Organizations: Part I

A Mini-Course Produced
by
IRS Exempt Organizations
Customer Education and Outreach

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(#1) The following is a fictitious discussion between Coach, the knowledgeable, straight-talking IRS Revenue Agent from the website, StayExempt.org, and representatives of tax exempt organizations at a community meeting to discuss Disaster Relief efforts.

Course Objectives

- Part I:
 - How charitable organizations may provide disaster relief
 - Tax law applicable to disaster relief providers
- Part II
 - Special rules applicable to employer-sponsored charitable organizations
 - Rules regarding deductibility of charitable contributions
 - Tax treatment of payments to disaster victims

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This is Part I of a two part mini-course on providing disaster relief through charitable organizations. Part I will discuss how charitable organizations may provide disaster relief and the tax law that generally applies to such tax-exempt organizations..

Part II will address the special rules that apply to the provision of assistance by employer sponsored charitable organizations, the law governing the deductibility of contributions for disaster relief purposes, and the income tax treatment of payments to disaster victims.

This program is brought to you by IRS Exempt Organizations.



#2: Hey, Coach..... Welcome to our Nonprofit Tax Law Clinic.

Coach (#3): Thanks for having me. With all of the recent hurricanes and other natural disasters, I'm glad to have the opportunity to talk about getting help to the victims.

#1: That's our goal, but we want to make sure we do it right. Our first question is: Do we need to form a new organization or can we work through an existing charitable organization? What do you think is best, Coach?

Helping Through an Existing Charitable Organization

- Advantages
 - Save time & resources on exemption application process
 - Established organizations (e.g. Red Cross or Salvation Army) organize targeted relief efforts
 - Local organizations provide rapid response
 - Avoid duplication of efforts

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Coach: (#3) That's an important and good question. In the immediate aftermath of a disaster, we often see a large outpouring of support from the public. But before you spend your precious time, energy and resources to incorporate a new organization and apply for tax-exempt status, it is important to consider whether there is already an organization out there that is equipped to deal with this type of emergency situation.

It might be more practical to see if an established community organization like the United Way, a religious organization like the Salvation Army, or a relief organization like the Red Cross is already setting up targeted relief efforts to address the victims' needs. Or, if you intend to help disaster victims in a distant location, you might be able to find a local organization that is better able to assess what is needed and deliver help faster.

Another factor to consider in deciding whether you want to form a new organization or work through an existing organization is how much control you want over the funds you intend to donate to the relief effort. Often, when you make a donation to a disaster relief organization, you can indicate that you want the moneys to be applied for a specific purpose--- and most charities will honor your wishes to the extent possible--- or the organization may set up a special fund to receive contributions to be used to help victims of a particular disaster ---but, by law, once you make that contribution, the charity has to have complete control over the ultimate use of the donated funds. In many cases, however, it might be best to leave the details to an established organization with more expertise in disaster relief. In addition, if you donate to an existing organization, you may avoid wasteful duplications of effort.

Existing Organization Activities

- Existing 501(c)(3) may engage in disaster relief activities regardless of its stated exempt purposes
- Charities **must** report any new activities on Form 990

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On the other hand, if, you intend to provide disaster assistance on an ongoing basis, or if you can't find a suitable existing organization to meet your needs, you may want to go ahead and set up a new organization.

Establishing a New Charitable Organization

- Preferable when:
 - Continuing control over use of funds is desired
 - Ongoing program is anticipated
 - No suitable existing organization found

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(#1)What if we already are a 501(c)(3) public charity but we're not set up to do disaster relief? Can we give money to another charity for that purpose?

(Coach) Yes. One qualified 501(c)(3) charity can give money to another qualified charity to carry out disaster relief.

(#2)What if our 501(c)(3) organization didn't expect to provide disaster relief when we were set up and didn't list that as one of our proposed activities when we applied for exemption? Can we still provide disaster relief help?

(Coach) An organization that is recognized as exempt under section 501(c)(3) may engage in other charitable activities even if those activities were not specified in its application. You don't need to obtain permission from the IRS to conduct the new charitable activities, but you must report such activities on your annual information return---your Form 990 or Form 990-EZ.

Organizing a New Charitable Organization

- Obtain employer information number (EIN)
 - Online: Preferred Method
 - Access www.irs.gov/businesses
 - Click on “EI Numbers”
 - Phone: (800) 829-4933 (toll-free)
 - Download Form SS-4 at IRS.gov: fax or mail

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(#1)How do we establish a new organization and get tax-exempt status quickly?

First, an organization must get an EIN ---an employer identification number --- before it files its application for exemption. The fastest way ---and the preferred way --- is to get an EIN on-line. Just go to irs.gov and click on businesses and click on EIN on the left navigation bar. You can also call our toll-free number 877-829-4933 or FAX or mail us a Form SS-4, *Application for Employer Identification Number*. You can download a copy of the SS-4 from the IRS.gov home page or call us at 1-800- TAX-FORM and we'll send you a copy. This is important because you'll use this number on all your filings with the IRS.

Organizing a New Charitable Organization

- File Form 1023, *Application for Recognition of Exemption Under Section 501(c)(3) of the Code*
 - If gross receipts expected to be > \$5000 per taxable year
 - Exception: Churches not required to file

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(#1) Do we have to file an application for exemption?

Generally, if you have or expect to have gross receipts in excess of \$5,000 per taxable year you must complete a application for exemption on Form 1023 and be recognized as exempt under section 501(c)(3) of the Code.

Churches, synagogues, mosques and temples are not required to file an application, but many of them do file anyway. Often, you'll find that potential contributors want to see a copy of your IRS letter (aka your determination letter) verifying your tax-exempt status before they'll give you a donation. Check out our mini-course on *Applying for Tax-Exempt Status* at Stayexempt.org. It will refer you to some great resources that can help you draft your organizational documents and complete your Form 1023.

Expediting an Application for Tax-Exempt Status

- Need compelling reason for expeditious treatment
 - Immediate need for type of relief
 - Material impact on charity's operations
 - Pending grant requires exemption
- Expedite requests rarely approved
- No guarantee of exemption

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(#2) Can our application for a disaster relief organization receive expedited consideration? We want to start getting aid out right away but some of our big donors want to make sure we are approved for tax-exemption before they contribute.

Yes, disaster relief and emergency hardship organizations may request expedited review. But I'd advise you not to request expedited handling of your application unless there is a really **compelling** reason for the IRS to approve the request. The IRS won't expedite review just because the organization may serve disaster victims.

You must be able to show that the applicant is meeting an **immediate** need of disaster relief and emergency hardship victims and that your operations will be adversely impacted in a material way if the application is not reviewed expeditiously. You should also indicate whether you have any pending large grants that are conditional on your receipt of your determination letter or any other circumstances you feel would seriously impact your continued operations if you don't receive expedited consideration.

Keep in mind that the IRS rarely approves requests for expedited handling, and even if we do, there is no guarantee that tax-exempt status will be granted.



(#2) A family in our community lost their home to a fire and one of their children was badly burned. Can we set up a disaster relief organization to help them?

Charitable Class

- Can't target assistance to particular individuals
- Can't accept earmarked contributions
- Class of eligible recipients must be:
 - Large enough
 - Example: Everyone in a disaster area
 - Indefinite enough
 - Example: Employees of an employer affected by current and future disasters

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(Coach) No. Because of the requirement that tax-exempt organizations must serve a charitable class, a tax-exempt disaster relief or emergency hardship organization cannot target and limit its assistance to specified individuals, such as a few persons injured in a particular fire. Also, remember that your donors cannot earmark contributions to a charitable organization for a particular individual or family.

(#1) What is a charitable class?

Coach: A charitable class is a group that is large enough or sufficiently indefinite that the community as a whole, rather than a pre-selected group of people, is benefited when a charity provides assistance. For example, a charitable class might consist of all the individuals in a city, county or state. This charitable class is large enough so that the potential beneficiaries cannot be individually identified and providing benefits to this group would benefit the entire community.

Indefinite Charitable Class

- Can't limit beneficiaries to a small, identifiable group affected by a single disaster or emergency
- No earmarking or pre-selection, meet objective criteria
- No private benefit or inurement
- Must provide for future beneficiaries
- Adopt-a-family programs

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But if the group of eligible beneficiaries is limited to a smaller group, such as the employees of a particular business, the group of persons eligible for assistance must be indefinite.

(#2) What do you mean when you say 'indefinite' charitable class?

For example, if an organization is set up to provide relief to alumni of a certain college and their family members who suffered from a specific disaster, such as a particular fire or an earthquake-- and also to alumni who may be affected by other future disasters-- it would be viewed as serving an indefinite charitable class. This is important because if the facts and circumstances show that a newly established disaster relief organization is intended to benefit only current beneficiaries and does not intend to provide for victims of any future disasters, the organization won't be considered to be benefiting a charitable class and the organization wouldn't qualify for exemption. Just like any other charity, a disaster relief organization has to show that it is not organized for the private benefit of any individual or insiders.

(#1) Our local interfaith community organization has an on-going "adopt-a-family" program to help families in times of disaster or hardship. Would that qualify as an indefinite charitable class?

Coach: Many organizations have these types of programs. They are generally OK, assuming there is an indefinite number of families in the pool of potential recipients. Even though the program might only serve a few families at a time, if they must meet established objective criteria and you don't allow earmark contributions for particular families, your program will generally be viewed as serving a charitable class.

Types of Assistance

- Charities may provide:
 - Basic necessities: food, shelter, medical assistance in immediate aftermath of a disaster
 - Assistance to victims of crimes of violence or physical abuse
 - Longer term assistance: mortgage assistance, tuition, child care, payments to allow surviving spouse to stay home with young children

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(#2)What kinds of assistance can a charity provide to individuals?

Coach: In the immediate aftermath of a disaster, such as a hurricane, a charity may provide money, services, or goods to make sure that the victims have the basic necessities ----food, clothing, housing, transportation, and medical care, including psychological counseling---regardless of their financial resources.

A charity also may help persons who have been the victims of crimes of violence or physical abuse who are temporarily unable to be self-sufficient.

(#1)Can a charity provide long term assistance to victims' families? Recently there was a fire in a large office complex in our community and many were killed. Can our community-based disaster relief organization provide on-going assistance to allow a surviving spouse to stay home with young children? What about helping out with the mortgage payments, car loans, or college tuition?

Yes. A charity can help address those longer term needs for childcare, housing, education, counseling and other living expenses following a disaster. However, an organization must make a needs assessment before it disburses long term assistance.



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(#2) Do you mean we have to evaluate whether a person is in financial need in the middle of a disaster or hardship situation?

Needs Assessment

- Not required
 - Immediate: crisis counseling, rescue services or emergency aid
- Required
 - Longer term: housing, tuition or childcare assistance

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(Coach): Not really---We take a common sense approach to this requirement. A charity can attend to a disaster victim's immediate needs without stopping to make an assessment of need.

For example, in the aftermath of a disaster, a charity can provide crisis counseling, rescue services, or emergency aid—like blankets or hot meals--without a showing of financial need. Persons in need of such services are considered to be distressed regardless of whether they are in financial need.

But, as time goes on, people are better able to call on their individual resources, and it becomes appropriate to conduct a needs assessment. So, for example, if you are planning to provide longer-term housing assistance to victims of a hurricane, you would be required to make an assessment of need before disbursing aid.

Needs Assessment

- Charity must make objective evaluation of need at time of grant
 - Disaster victims have no entitlement to charity aid
 - Funds set aside for future needs require needs assessment at time funds are paid out

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(#1) Isn't it enough to show that the recipients are disaster victims?

(Coach): No. Charitable funds can't be distributed to individuals just because they are victims of a disaster. A charity's decision about how its funds will be distributed must be based on an objective evaluation of a victim's need at the time a grant is made.

(#2) Can we set-aside funds for possible future needs of disaster victims and their families?

(Coach) Yes. Sometimes disaster victims' families have the means to meet immediate needs, but will have an on-going need for counseling, medical, housing, child care or educational expenses. You can grant funds to help meet current or continuing needs or you can set aside funds for future needs of disaster victims' families. However, when payments are made from set-aside funds, you must make a needs assessment at the time the set aside funds are paid out.

Assistance to Businesses

- Charities may provide assistance to businesses
 - Needy or distressed business owners
 - Combat community deterioration
 - Lessen burdens of government
- Example: Funding of infrastructure repair in a business district after a tornado.
 - Benefit to individual businesses is incidental to public purposes.

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(#1): Can we help businesses affected by a disaster as well as individuals?

(Coach): Yes. You can provide disaster assistance to help business owners who are financially needy or otherwise distressed. You also can provide assistance to businesses if you can show that it will combat community deterioration or lessen the burdens of government.

(#2) What kind of assistance would combat community deterioration?

(Coach) Let's say that, as a result of a tornado, the central business district of a community is severely damaged. Because of the devastation, the area has become blighted. No single business wants to begin restoration efforts unless it can be assured that the whole business district will be restored. A charity may provide funds to begin rebuilding the infrastructure of the district, such as for roads, sidewalks, parks, sewers, and power lines. This type of assistance would accomplish a charitable purpose by combating community deterioration. Accordingly, any benefit derived by any individual private business by the rehabilitation effort is considered to be incidental to the greater public benefit provided to the community at large.

Documentation

- Short Term Assistance
 - Type of assistance provided
 - Criteria used for giving assistance
 - Date, place, estimated number of persons assisted, charitable purpose served, and cost of the aid
- Longer Term, Non-emergency Assistance
 - Description of needs assessment
 - More complete description of assistance
 - Show how program furthers exempt purposes
 - Objective criteria applied in providing assistance

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(#1): Do we have to document the assistance we give out? If so, how?

(Coach): That depends on what kind of assistance you are providing. If you're providing short term emergency aid ---like blankets, hot meals, and fans-- you'd only be required to keep records showing the aid you distributed, the criteria you used in giving assistance, the date, place and estimated number of persons assisted, but not the names and addresses of individuals. You'll also want to keep a record of the charitable purpose you were trying to accomplish and the cost of the assistance you provided.

When you're giving longer-term, non-emergency aid---based on an assessment of need -- you'll have to keep a more complete description of the assistance you provided, showing how the relief program furthers your organization's purposes, and the objective criteria---the distribution formula---you used in deciding who will be given assistance.

You also should keep records showing the names, addresses, and the amount distributed to each recipient. You'll also need to record the information about any relationship between a recipient and the officers, directors, or key employees of any related employer or other substantial contributors to your organization.



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(#1): Does a disaster relief organization have any particular reporting requirements with the IRS?

Reporting Requirements

- Public Charities: include hospitals, schools, organizations that receive broad public support, and organizations that support other public charities
 - Form 990, Form 990-EZ or Form 990-N
 - Depends on amount of assets and gross receipts
- Private Foundations: receive most of their support from a single source
 - File 990-PF, regardless of amount of assets or receipts

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(Coach): Yes. The letter you receive from the IRS, approving your tax-exempt status, will indicate whether you are a private foundation or a public charity and which form you are required to file.

Public Charities—such as hospitals, schools, and organizations that receive broad public support—file either a Form 990, *Return of Organization Exempt From Tax*, Form 990-EZ or the electronic Form 990-N depending on their assets and gross receipts.

Private foundations---organizations that generally receive most of their support from a single source-- must file a Form 990-PF, *Return of Private Foundations*, regardless of the amount of their charitable activities.

If disaster relief activities make up one of your organization's largest programs, you'll have to describe the services provided on the form.

Carefully review the form instructions for information about reporting disaster relief activities on your information return.

Form 990 Schedules & Resources

- Special schedules may be required depending on activities
 - Foreign activities (Schedule F)
 - Grants to individuals (Schedule I)
 - Noncash Contributions (Schedule M)
- 990 Information and Resources
 - www.irs.gov/eo
 - www.stayexempt.org
 - Form 990 Mini-courses

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(#2): I know the new Form 990 has a lot of schedules. Are disaster relief organizations required to complete any particular schedules?

(Coach): A public charity may be required to complete Schedule F if it carries out any relief activities abroad or Schedule M if it makes grants or disbursements to individuals. A private foundation will provide similar information on grants and foreign activities on the Form 990-PF.

You can learn more about the redesigned Form 990 and Schedules online at www.irs.gov/eo or by viewing the Form 990 mini-courses at www.stayexempt.org.



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(#1) Thanks, Coach. You've given us a lot of good information today but we still have a lot of other questions. What if our business wants to help our employees in a time of need? Will my contributions for disaster relief be deductible? Will recipients have to pay taxes on the aid they receive?

Those are all great questions---I'd be happy to come back and address them at your next meeting. Until then you can go to our web site www.irs.gov/charities and download a copy of Publication 3833, *Disaster Relief: Providing Assistance Through Charitable Organizations* and review our other related web site materials and publications. And if you have any questions that can't wait until we meet again you can call our toll-free number at 877-829-5500.

(#1) That would be great! See you next time Coach for Providing Disaster Relief through Charitable Organizations---Part II.

Take care now, and call our toll-free number at 877-829-5500 if you have any further questions.

For More Information

- Publication 3833, *Disaster Relief*
- Publication 557, *Tax Exempt Status for Your Organization*
- Publication 526, *Charitable Contributions*
- Publication 1771, *Charitable Contributions: Substantiation and Disclosure*
- Publication 4221-PC, *Compliance Guide for 501(c)(3) Public Charities*
- Publication 4221-PF, *Compliance Guide for 501(c)(3) Private Foundation*
- See other www.StayExempt.org mini-courses on subjects of interest